FILE COPY

FILED
MAR 17 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-839

ROSEBUD WILLIAMS,
Petitioner

versus

MISSISSIPPI EXPORT RAILROAD,
Respondent

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES B. RAMSEY.
Attorney for Petitioner,
RAMSEY, BODRON & THAMES
First National Bank Building
Vicksburg, Mississippi 39180

Of Counsel:
WILLIAM W. RAMSEY,
Vicksburg, Mississippi,
and
DONALD CUMBEST,
Pascagoula, Mississippi

I N D E X

	Page
Petition for Rehearing on Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi ----------	1
Certificate of Presentment ----------	6
Certificate of Service ----------	6

AUTHORITIES CITED

Tiller v. Atlantic Coast Line Railroad Co., 63 S. Ct. 444 (1943) --------	4
Federal Employer's Liability Act, 45 United States Code Annotated, Section 54 ----------	1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

NO. 72-839

ROSEBUD WILLIAMS,
Petitioner

versus

MISSISSIPPI EXPORT RAILROAD,
Respondent

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioner prays that the Court grant a rehearing on the Petitioner's Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi which Petition was denied by this Court on February 20, 1973. As grounds therefor the Petitioner contends that the Mississippi Supreme Court assumed an erroneous position and stance contrary to the Federal Employer's Liability Act, 45 United States Code Annotated, Section 54, which reads as follows, to-wit:

Section 54. Assumption of Risks of Employment.

> "In any action brought against any common carrier under or by virtue of any of the provisions of this chapter to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."
>
> Apr. 22, 1908, c. 149, § 4, 35 Stat. 66; Aug. 11, 1939, c. 685, § 1, 53 Stat. 1404.

The entire opinion of the Mississippi Supreme Court was set out in the Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi; however, the gist of that Court's logic concerning negligence under the FELA is set forth as follows, to-wit:

> [1] In Rogers v. Missouri Pacific Railroad Co., 352 U. S. 500, 77 S. Ct. 443, 1 L Ed. 2d 493 (1957), the United States Supreme Court said only slight negligence on the part of the defendant need be proved. But even that degree of negligence must be proved by a preponderance of the evidence. This the plaintiff failed to do. Plaintiff did not prove

that defendant was guilty of any negligence whatsoever.

[2] The evidence was uncontradicted that plaintiff was an experienced railroad section hand; in fact, he himself testified that he had had 24 years experience in this work. The proof was undisputed that new creosoted cross-ties came banded together with metal bands or wire. The crew members were solely responsible for cutting these metal bands and getting them out of the way. Plaintiff claimed that he was injured when he tripped over a cut banding wire. Robert Smith, plaintiff's working companion, testified that plaintiff actually wielded the maul that broke the banding wire. Plaintiff cannot recover from his employer for injuries caused solely by his own negligence. It was his duty, and his alone, to cut and remove the banding wire. This he failed to do. It was his negligence that caused his injuries. Neither the weight of the cross-tie nor the number of workmen handling it had anything whatsoever to do with the plaintiff tripping over a banding wire that he had carelessly left on the floor of the gondola car.

Even under the stringent rules of the FELA, the defendant was entitled to a pre-emptory instruction. There was no proof whatsoever that the defendant was guilty of even the slightest degree of negligence.

The judgment is, therefore, reversed

and judgment rendered for the defendant.

Reversed and rendered.

Petitioner contends the Mississippi Supreme Court has failed to apply the correct law as defined by the Court. This matter goes beyond the petitioner in this cause, and directly influences the lives of all railroad employees and their families in this State.

The problem of correct application of assumption or risk is the single query advanced here by the petitioner. This Court has applied a definition of the FELA in relationship to the common law principal of assumption or risk. A railroad employee seeks from this Court application of the correct rule as set forth in the leading case of Tiller v. Atlantic Coast Line Railroad Co., 63 S. Ct. 444 (1943). The relevant part of that decision is at page 446-447:

> "We hold that every vestige of the doctrine of assumption of risk was obliterated from the law by the 1939 amendment, and that Congress, by abolishing the defense of assumption of risk in that statute, did not mean to leave open the identical defense for the master by changing its name to "non-negligence". As this Court said in facing the hazy margin between negligence and assumption of risk as involved in the Safety Appliance Act of 1839, 45 U.S.C.A. § 1 et seq., "Unless great care be taken, the servant's rights will be sacrificed by simply charging him with assumption

COPY PRINTED CLOSE TO EDGE

of the risk under another name. "and no such result can be permitted here."

The Mississippi railroad employee is not receiving the equal protection of the Federal laws in the area of FELA. It is time for this Court to decide the issue.

Wherefore, the Petitioner prays for a rehearing on his Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi.

Respectfully submitted,

JAMES B. RAMSEY
Attorney for Petitioner
RAMSEY, BODRON & THAMES
First National Bank Building
Vicksburg, Mississippi 39180

Of Counsel:
William W. Ramsey,
Vicksburg, Mississippi
and
Donald Cumbest,
Pascagoula, Mississippi

CERTIFICATE OF PRESENTMENT

I, the undersigned attorney of record for Petitioner, Rosebud Williams, hereby certify that this Petition for Rehearing On Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi is presented in good faith and not for delay and further the petition is restricted to a substantial ground available to the petitioner not previously presented.

This the 16th day of March, 1973.

JAMES B. RAMSEY
Attorney for Petitioner
RAMSEY, BODRON & THAMES
First National Bank Building
Vicksburg, Mississippi 39180

CERTIFICATE OF SERVICE

I, the undersigned attorney of record for the petitioner, Rosebud Williams, hereby certify that I have this day mailed, postage prepaid, United States mail, two copies of the foregoing Petition for Rehearing on Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi to William S. Murphy, P.O.Box 585, Lucedale, Mississippi.

This the 16th day of March, 1973.

JAMES B. RAMSEY
Attorney for Petitioner
RAMSEY, BODRON & THAMES
First National Bank Building
Vicksburg, Mississippi 39180